IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

CRL.A.No. 1774 of 2003()

SC.532/2000 of ADDL.SESSIONS COURT (ADHOC), KASARAGOD

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APPELLANT: ACCUSED.

MANILASAN @ MANI, S/O.KRISHNAN,
EDAPARAMBA, ADOOR VILLAGE.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: COMPLAINANT AND STATE.

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1. THE STATION HOUSE OFFICER, ADHUR.

2. STATE OF KERALA REP. BY THE
PUIBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.PUZHAKARA MUHAMMED.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 1774 of 2003

Dated this the 19th March, 2007.

J U D G M E N T

The accused in S.C.No.532/2000, on the file of the Additional Sessions Court, (Ad hoc-I), Kasargod, is the appellant. He was found guilty of the offence under Section 55(a) of the Abkari Act, and, therefore, was convicted and sentenced to undergo rigorous imprisonment for a period of 3 ½ years, and also to pay a fine of Rupees One Lakh, in default, to undergo rigorous imprisonment for a period of three months. Hence, this appeal.

2. The prosecution case is that PW.2, the then Sub Inspector of Police, Adhur Police Station, was conducting law and order duty on 20.8.99, along with other police personnel of his station. They have detected the appellant carrying a bag along the Edaparamba-Vellachery road. Though he tried to escape, leaving behind the bag, police chased and apprehended him. On inspection, the bag contained 105 packets of Karnataka arrack, each packet containing 100 ml. He was, therefore, arrested at 17.55 hours, on the same day. Ext.P1 is the seizure mahazar prepared by PW.2, PW.1, an

independent witness of the locality, being the attestor, signed the arrest memo. PW.1 had fully supported the prosecution case. Two samples were taken from six packets, and filled the same in 375 ml. bottles, each bottle containing 300 ml. It was forwarded under Ext.P3 to the Analyst, and PW.2 obtained Ext.P4 chemical analysis report. It reveal that, when tested, the sample contained 31.49 and 30.87 percent by volume of Ethyl Alcohol. Therefore, the final report was filed and the appellant was proceeded against under Section 55(a) of the Abkari Act.

3. To prove the offence against the appellant, the prosecution examined 2 witnesses and marked 4 documents. The trial court accepted the evidence, and, therefore, convicted and sentenced the accused, as stated above.

4. When the appeal came up, considering the property list contained on the file of the court below, which had not been marked or shown and confronted with the Investigating Officer, PW.2, counsel for the appellant argued that only one sample bottle was sent

to the Analyst, and whereas, Ext.P4 reveal that two bottles, as samples, each containing 300 ml. were sent to the Analyst, and Ext.P4 certificate obtained.

5. I have gone through Ext.P1 seizure mahazar. In it, after seizing 105 packets of Karnataka arrack, 6 packets were taken out, and the samples were poured into two bottles of 375 ml. capacity each, thus, each bottle containing 300 ml. of arrack. Ext.P3, a forwarding note, relied on with the list of articles forwarded, contains two specimen bottles, as described in Ext.P1 seizure mahazar.

6. It is true that in the property list, due to a clerical error, the sample sent is written as one bottle. When Exts.P1 and P3 are considered and accepted, in the light of the evidence of Pws.1 and 2, I find that there is no reason to doubt these two documents, as well as the oral evidence of prosecution witnesses. PW.2, when cross examined by the defence, explained that the property list available in the records of the court below was written wrongly, due to a clerical error, as one sample bottle, instead of two sample bottles. As per the available clear evidence in Exts.P1 and P2, and the corroborative independent evidence of PW.1, I find, there is nothing to doubt about

the number of bottles of specimen taken for sending to the Analyst. The signature of the independent witness was available on the label contained on the specimen bottles, the arrest memo, as well as on the balance of arrack seized and sealed. PW.1 also signed in Ext.P1, and all other documents. In such circumstances, as rightly found by the court below, I am of the opinion that there is nothing to doubt about the evidence of the prosecution. Hence, the offence under Section 55 (a) of the Abkari Act, is clearly proved against the accused. Therefore, I uphold the findings of the court below, holding him guilty and convicting him thereunder.

7. The sentence imposed by the court below is rigorous imprisonment for 3 ½ years. Counsel for the appellant, however, submits that the sentence is disproportionate to the act committed by the appellant, and, therefore, a lenient view may be taken. During the questioning on sentence, the appellant had stated that he has got an aged mother. No other material has been produced or evidence adduced to substantiate the mitigating circumstances. He had a case during his examination under Section 313 Cr.P.C. statement, that

PW.1, Ramachandran, is on inimical terms with him. Therefore, he was instrumental in bringing about this false case. But he has not adduced any defence evidence.

8. Considering the materials on record, and also the date of conviction, which was in the year 2003, I am of the opinion that justice would be met, if I sentence the appellant, accused, to rigorous imprisonment for six months.

In the result, the appeal is allowed in part. Rigorous imprisonment for 3 ½ years is modified and reduced to rigorous imprisonment for six months. The fine of Rupees One Lakhs and the default sentence thereon, imposed by the court below is upheld. The appellant is entitled for set off, as per the law. The trial court shall issue modified warrant, initiate steps and execute the sentence, without further delay.

J.M. JAMES,
JUDGE

nj.